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2013/0296 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising Luxembourg to introduce a special measure derogating from Article 285 of
Directive 2006/112/EC on the common system of value added tax**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Pursuant to paragraph 1 of Article 395 of Directive 2006/112/EC¹ of 28 November 2006 on the common system of value added tax, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to apply special measures derogating from the Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

By letter registered with the Commission on 24 October 2012, Luxembourg requested an authorisation to apply a measure derogating from Article 285 of Directive 2006/112/EC, allowing it to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000.

In accordance with paragraph 2 of Article 395 of Directive 2006/112/EC, the Commission informed the other Member States by letter dated 9 November 2012 of the request made by Luxembourg. The Commission notified Luxembourg by letter dated 12 November 2012 that it had all the information necessary to consider the request.

General context

Chapter 1 of Title XII of Directive 2006/112/EC allows Member States to apply special schemes for small enterprises, including the possibility of exempting taxable persons below a certain annual turnover. This exemption implies that a taxable person does not have to charge VAT on his supplies and, consequently, he cannot deduct the VAT on his purchases.

Under the first paragraph of Article 285 of Directive 2006/112/EC, Member States, which did not exercise the option under Article 14 of Directive 67/228/EEC to introduce exemptions or graduated tax relief, may exempt taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency. Pursuant to the second paragraph of Article 285 of Directive 2006/112/EC, those Member States may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.

According to the information submitted to the Commission, Luxembourg currently exempts from VAT taxable persons whose annual turnover is no higher than EUR 10 000. Furthermore, Luxembourg informed the Commission that it makes use of the option pursuant to the second paragraph of Article 285 of Directive 2006/112/EC by granting graduated tax relief to taxable persons whose annual turnover is between EUR 10 000 and EUR 25 000.

Luxembourg has the objective to apply a turnover threshold of EUR 25 000 as regards the exemption scheme for small businesses whilst at the same time abolish the application of the graduated tax relief. It considers that, as part of an economic recovery programme and also to take account of the monetary depreciation since the introduction of the exemption scheme in Luxembourg, increasing the current exemption scheme ceiling for small enterprises to EUR 25 000 should enable the VAT administrative burden to be significantly lightened for enterprises with a low turnover and should foster the creation of new opportunities for this type of businesses.

The application of the increased exemption threshold is in its view appropriate to simplify the VAT system for small enterprises by significantly reducing the burdens on those businesses

¹ OJ 347, 11.12.2006, p.1.

eligible for the scheme by releasing them from many of the VAT obligations under the normal VAT arrangements. Moreover, the measure pursued would have the additional effect to reduce the administrative burden for businesses currently subject to the graduated tax relief scheme, which will be removed at the same time. The system would be optional for taxable persons. According to the Luxembourg authorities, the special measure pursued would only have a negligible effect on the overall amount of VAT revenue collected (not more than 0.10%).

Existing provisions in the area of the proposal

In 2004, the Commission made a proposal to - inter alia - increase the annual turnover threshold available to Member States (COM(2004) 728 final²) for the exemption from VAT of taxable persons to EUR 100 000. That proposal is still on the table of the Council.

In the medium term, the Commission considers that the adoption of that proposal would be a more appropriate way forward than having a piecemeal approach based on individual derogations. The Commission therefore calls on the Council to resume the negotiations on that proposal.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Not relevant.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

The proposal for a Council Decision aims at applying a simplification measure which removes many of the VAT obligations for businesses operating with an annual turnover no higher than EUR 25 000 and therefore has a potential positive impact.

Because of the narrow scope of the derogation, and its limited application in time, the impact will in any case be limited.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal aims to authorise Luxembourg to apply a simplification measure derogating from Article 285 of Directive 2006/112/EC so as to allow for the exemption from VAT of taxable persons with an annual turnover no higher than EUR 25 000. Taxable persons may still opt for the normal VAT arrangements.

Legal basis

Article 395 of Council Directive 2006/112/EC.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0728:FIN:EN:PDF>

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle as this Decision concerns an authorisation granted to a Member State on its own request and does not constitute any obligation.

Given the narrow scope of the derogation, the special measure is proportionate to the aim pursued.

Choice of instruments

Proposed instrument: Council Decision.

Other means would not be adequate for the following reasons:

Under Article 395 of Council Directive 2006/112/EC, a derogation from the common VAT rules is only possible upon authorization of the Council acting unanimously on a proposal from the Commission. A Council Decision is the most suitable instrument since it can be addressed to an individual Member State.

4. BUDGETARY IMPLICATION

The proposal will not adversely affect the Union's own resources from VAT because Luxembourg will carry out a compensation calculation in accordance with Article 6 of Council Regulation (EEC, EURATOM) No 1553/89.

5. OPTIONAL ELEMENTS

The proposal includes a sunset clause.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax³, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 24 October 2012, Luxembourg requested authorisation to apply a measure derogating from Article 285 of Directive 2006/112/EC, allowing Luxembourg to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000. Through that measure, those taxable persons would be exempted from all or some of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States of the request made by Luxembourg by letter dated 9 November 2012. By letter dated 12 November 2012, the Commission notified Luxembourg that it had all the information necessary to consider the request.
- (3) Under Article 285 of Directive 2006/112/EC, Member States, which have not exercised the option under Article 14 of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes, structure and procedures for application of the common system of value added tax⁴, may exempt from VAT taxable persons whose annual turnover is no higher than EUR 5 000 or the equivalent in national currency and may also grant graduated tax relief to taxable persons whose annual turnover exceeds the ceiling fixed by them for its application.
- (4) Luxembourg has informed the Commission that it currently exempts from VAT taxable persons whose annual turnover is no higher than EUR 10 000 and that it makes use of the option of granting graduated tax relief with respect to taxable persons whose annual turnover is between EUR 10 000 and EUR 25 000. Luxembourg has requested the authorisation, as a derogating measure, to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000.
- (5) A higher threshold for the special scheme is a simplification measure, insofar as it may significantly reduce the VAT obligations of small businesses and would enable

³ OJ 347, 11.12.2006, p.1.

⁴ OJ 71, 14.4.1967, p. 1303/67

Luxembourg to cease applying the graduated tax relief scheme that is burdensome for businesses. Taxable persons may still opt for the normal VAT arrangements.

- (6) In its proposal for a Directive amending Directive 77/388/EEC with a view to simplifying valued added tax obligations dated 29 October 2004⁵, the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. This Decision is in line with that proposal.
- (7) The derogating measure will only have a negligible effect on the overall amount of tax collected at the stage of final consumption and will not adversely affect the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 285 of Directive 2006/112/EC, Luxembourg is authorised to exempt from VAT taxable persons whose annual turnover is no higher than EUR 25 000.

Article 2

This Decision shall take effect on the day of its notification.

This Decision shall apply until the date of entry into force of Union rules amending the amounts of the annual turnover ceilings below which taxable persons may qualify for VAT exemption or until 31 December 2016, whichever date is earlier.

Article 3

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels,

*For the Council
The President*

⁵ COM(2004) 728 final.